IN THE SUPREME COURT OF MISSOURI

Angela Anderson,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. SC94372
	)	
Union Electric Company,	)	
	)	
Respondent.	)	

SUBSTITUTE BRIEF OF RESPONDENT

Appeal from the Circuit Court of Morgan County
The Honorable Kenneth Michael Hayden, Circuit Judge

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JURISDICTIONAL STATEMENT

Appellant Angela Anderson commenced this action for wrongful death in the Circuit Court of Morgan County against Respondent Union Electric Company d/b/a Ameren Missouri.

On September 12, 2013, the circuit court granted Ameren's motion to dismiss and entered judgment against the plaintiff on all claims. L.F. at 36.

On October 7, 2013, the plaintiff filed a motion for leave to amend her petition. L.F. at 38.

On October 10, 2013, without obtaining a ruling on the motion for leave to amend, the plaintiff filed a notice of appeal identifying the dismissal judgment of September 12, 2013, as the only judgment from which she was seeking to appeal. L.F. at 48.

On November 14, 2013, after the notice of appeal was filed, the circuit court made a docket entry stating that the motion for leave to amend was denied. Supplemental Legal File at 1.

In her Point II, the plaintiff purports to seek relief from the circuit court's docket entry stating that her motion for leave to amend was denied. The plaintiff never filed a notice of appeal from this docket entry. The sole notice of appeal filed in this case seeks relief only from the judgment of dismissal. Therefore, as noted below, the Court lacks jurisdiction over Point II, which should be dismissed.

STATEMENT OF FACTS

Appellant Angela Anderson commenced this action for wrongful death in the Circuit Court of Morgan County against Respondent Union Electric Company d/b/a Ameren Missouri. L.F. at 1. The plaintiff alleged that she was the mother of Alexandra and Brayden Anderson. L.F. at 4 (¶¶ 1-3).

The plaintiff alleged that Ameren owned certain real property located in the State of Missouri, commonly denominated the Lake of the Ozarks. L.F. at 4 (¶ 5). The plaintiff alleged that at all times, Ameren "charged all person, firms or entities with docks on The Lake of the Ozarks, including plaintiff, either 'annual use fees' and or 'lump sum use fees' as a condition or predicate for placement, maintenance, use and/or enjoyment of docks on The Lake of the Ozarks." L.F. at 5 (¶ 8). The plaintiff alleged that she and her husband owned real property abutting the Lake of the Ozarks. L.F. at 5 (¶ 10). The plaintiff alleged that the property "was serviced by a lakeside dock supplied with an electric service" and that the dock's "placement, maintenance and use was the subject of fees charged by and paid to" Ameren. L.F. at 6 (¶ 11).

The plaintiff alleged that Ameren issued permits for the operation of a large marina and restaurant at the Lake of the Ozarks and that Ameren "knew or had reason to know that permitting the operation of said facility would significantly increase boat traffic in the area of the Gravois arm generally, and in the vicinity of the Anderson dock specifically." L.F. at 6 (¶ 13). The plaintiff alleged that Ameren "knew or in the exercise of reasonable care should have known the increased traffic in the Gravois Arm as a

consequence of the aforementioned permitting would subject floating docks in the area, including the Anderson dock, to increased wear, tear and stress." L.F. at 6 (¶ 14).

The plaintiff alleged that Ameren knew or in the exercise of reasonable care should have known adequate electrical protection of docks located on the lake required ground fault interrupt devices be placed at or above the seawall of each dock in order to prevent the hazards of electrical shock or electrocution in the event of a short circuit or other electrical fault. L.F. at 6 (¶ 15). The plaintiff alleged that Ameren knew or had reason to know a significant number of electrified docks on the Lake of the Ozarks lacked GFI protection at or above the seawall of each dock and made no effort to apprise permitted dock owners of the need for seawall GFI protection or the risk of electrical shock in the event of a short circuit not protected by seawall GFI devices. L.F. at 7 (¶¶ 16-17).

The plaintiff alleged that on or about July 4, 2012, Brayden and Alexandra Anderson died when they "were swimming in the vicinity of the Anderson dock when they encountered stray electrical current." L.F. at 7 (¶ 18).

The plaintiff alleged that Ameren was negligent in one or more of the following particulars:

failing to "adequately inspect the Anderson dock to ensure adequate ground fault interrupter protection";

failing to warn dock owners "including Brian and Angela Anderson, of the need for ground fault interrupter protective devices at or above the dock seawalls";

failing to include ground fault interrupter protective devices at or above the seawall as a precondition to dock permitting;

failing to warn dock owners along the Gravois arm of anticipated increase in wear and tear on docks as a consequence of the permitting of the restaurant property. L.F. at 7 (¶ 21); L.F. at 9 (¶ 21).

Ameren moved to dismiss, arguing that the plaintiff had failed to articulate a common law or statutory duty owed by Ameren and that Ameren was immune from the plaintiff's claims under the Recreational Use Act, §§537.345 et seq., RSMo. L.F. at 12.

On September 12, 2013, the circuit court granted Ameren's motion to dismiss and entered judgment against the plaintiff on all claims, holding that Ameren was protected by the Recreational Use Act. L.F. at 36.

On October 7, 2013, the plaintiff filed a motion for leave to amend her petition. L.F. at 38.

On October 10, 2013, the plaintiff filed a notice of appeal identifying the dismissal judgment of September 12, 2013, as the only judgment from which she was seeking to appeal. L.F. at 48.

On November 14, 2013, the circuit court made a docket entry stating that the motion for leave to amend was denied. Supplemental Legal File at 1.

ARGUMENT

The judgment of the circuit court should be affirmed because the plaintiff's claims are barred by the Recreational Use Act, which provides immunity from liability to any landowner that "invites or permits any person to enter his land for recreational use, without charge." The RUA defines "charge" as "the admission price or fee asked by an owner of land . . . to use land for recreational purposes." § 537.345(1), RSMo.

The important public purpose of the RUA is to encourage the free use of land for recreational purposes in order to preserve and utilize Missouri's natural resources. The RUA provides immunity to Missouri governmental entities, the federal government, public utilities, and private property owners. *See Lonergan v. May,* 53 S.W.3d 122 (Mo. App. 2001); *Foster v. St. Louis County,* 239 S.W.3d 599 (Mo. banc 2007); *State ex. rel. Young v. Wood,* 254 S.W.3d 871 (Mo. banc 2008); *Wilson v. United States,* 989 F.2d 953 (8th Cir. 1993).

The circuit court dismissed the plaintiff's claims as barred by the Act because there was no dispute that the plaintiff's decedents entered the Lake of the Ozarks (allegedly owned by Ameren) to swim without charge. The Court of Appeals issued an opinion stating that the plaintiff's allegation that the parents of the decedents paid a dock fee -- not a fee to swim in the Lake -- removes this case from the scope of the Act's immunity. This holding, which would have far-reaching effects, is against the interests of the people of Missouri and conflicts with prior decisions.

This Court should affirm the judgment of the circuit court.

A. Point I should be denied because the plaintiff's claims are barred by the Recreational Use Act.

It is appropriate to dismiss a case when the petition shows that the defendant has immunity under a statute. *See Hendricks v. Curators of University of Missouri,* 308 S.W.3d 740, 742 (Mo. App. 2010); *State ex. rel. Young v. Wood,* 254 S.W.3d 871 (Mo. banc 2008). A trial court's decision to grant a motion to dismiss is reviewed de novo. *Hendricks,* 308 S.W.3d at 742.

Every state in the Union has adopted statutes similar to Missouri's Recreational Use Act ("RUA"). *See Lonergan v. May,* 53 S.W.3d 122, 127 (Mo. App. 2001). Missouri's version of the RUA became law in 1983 upon the enactment of §§ 537.345 through 537.348, RSMo. *Id.*

The plaintiff is incorrect in declaring that the RUA must be strictly construed. The only authority that the plaintiff attempts to cite in support of this mistaken contention is *Overcast v. Billings Mutual Ins. Co.,* 11 S.W.3d 62, 69 (Mo. banc 2000), which does not deal with statutory immunity, but rather with the unrelated issue of statutory ***preemption*** of common law remedies. *Overcast* merely holds that the additional statutory remedy for an insurance company's vexatious refusal to pay does not preempt claims for defamation. *Overcast* has nothing to say about the immunity granted in the RUA.

Contrary to the plaintiff's argument, it is settled that the RUA is to be enforced by giving effect to the legislative intent as reflected in the plain language of the statute. *Young,* 254 S.W.3d at 872-873.

The purpose of the RUA is to encourage the free use of land for recreational purposes in order to preserve and utilize Missouri's natural resources. *Id.; Foster v. St. Louis County,* 239 S.W.3d 599, 600 (Mo. banc 2007); *Lonergan,* 53 S.W.3d at 127. To invoke the RUA, the general requirements are "(1) an owner of the land; (2) entry upon the land; (3) entry upon the land without charge; and (4) entry for recreational use." *Lonergan,* 53 S.W.3d at 128; *Young,* 254 S.W.3d at 873. If these requirements are met, then the owner "owes no duty to the entrants to keep the land safe or to give any general or specific warnings with respect to any natural or artificial condition, structure, or personal property on the land, unless one of the exceptions contained in section 537. 348 apply." *Lonergan,* 53 S.W.3d at 128; *Young,* 254 S.W.3d at 873.

The RUA defines "land" as "all real property, land and water, and all structures, fixtures, equipment and machinery thereon." §537.345(2), RSMo. The Lake of the Ozarks is land protected by the RUA. *See Lonergan,* 53 S.W.3d at 129.

The extent of the landowner's immunity is outlined in section 537.347, which provides that an owner of land who "directly or indirectly invites or permits any person to enter his land for recreational use, without charge, whether or not the land is posted, does not thereby (1) extend any assurance that the premises are safe for any purpose; (2) confer upon such person the status of an invitee, or any other status requiring of the owner a duty of special or reasonable care; (3) assume responsibility for or incur liability for any injury to such person or property caused by any natural or artificial condition; (4) assume responsibility for any damage or injury to any other person or property caused by an act or omission of such person."

The exceptions to the immunity granted by section 537.346 are listed in section 537.348, which provides that landowners can incur liability if there is a malicious or grossly negligent failure to warn or guard against a dangerous condition, a fee charged for entry upon the land, or if the land falls within the other exceptions contained in section 537.348. *Foster,* 239 S.W.3d at 601. These exceptions include "any noncovered land," which is defined as "any portion of any land, the surface of which portion is actually used primarily for commercial, industrial, mining or manufacturing purposes, provided, however, that use of any portion of any land primarily for agricultural, grazing, forestry, conservation, natural area, owner's recreation or similar or related uses or purposes shall not under any circumstances be deemed to be use of such portion for commercial, industrial, mining or manufacturing purposes." § 537.348(3)(d).

B. The trial court properly granted the motion to dismiss.

The plaintiff's petition concedes all four elements of Ameren's right to immunity in this case. According to the petition, Ameren owned the lake, and the minor children entered the lake, without charge, and for recreational use. L.F. at 4, 7 (¶¶ 5, 18).

Ameren's right to the protection of the RUA was first established in *Lonergan,* in which relatives of a passenger killed in a boat accident on the Lake of the Ozarks brought a negligence action against Ameren alleging that Ameren "failed to regulate obstructions to navigation on the lake." 53 S.W.3d at 125. The Court of Appeals held that the RUA "relieves the landowner of any duty to keep his land safe so long as the owner does not charge a user fee. In other words, it creates a tort immunity for landowners who open

their land to the public free of charge for recreational use. It is not ambiguous." *Id.* at 127.

In *Lonergan*, the circuit court entered judgment for Ameren, and the Court of Appeals affirmed, holding that Ameren had immunity under the RUA for recreational use of the Lake of the Ozarks: "The language of this statute is clear and unambiguous, and based on the plain and ordinary meaning of the language of the statute, we find that the legislature meant to protect lake owners from liability when accidents occur on the lake by those who are engaging in boating activities, water sports or any other 'pleasure' on the water. Therefore, [Ameren] is protected under § 537.346." *Id.* at 129.

This Court examined the RUA in the *Foster* case, in which the plaintiff sustained an injury while he was playing football in an open field at a park owned by St. Louis County. 239 S.W.3d at 600. The plaintiff in *Foster* conceded that he was not charged a fee to enter the park or to use the field to play football. *Id.* However, he argued that the park was "noncovered land" because St. Louis County routinely charged a fee to use some of the picnic areas in the park. *Id.* In affirming the entry of judgment in favor of St. Louis County, the Court rejected the plaintiff's argument that the fee to use the picnic areas constituted a commercial purpose: "In this case, Foster admitted that he entered Suson Park free of charge for recreational purposes. He was injured in an open field held open to the public for recreational use free of charge." *Id.* at 602. The portion of land on which he was injured was not used primarily for commercial purposes so as to fall outside of the immunity provisions of the act. *Id.*

This Court revisited the RUA in *State ex rel. Young v. Wood,* in which the owners of a farm gave permission to two hunters to enter the farm to hunt wild turkeys. One hunter shot and killed the other. The survivors of the hunter who was killed brought a wrongful death action against the farmers alleging that they were negligent in failing to warn about the presence of other hunters. The farmers filed a motion to dismiss for failure to state a claim, arguing immunity under the RUA. The motion was denied, and the farmers requested the Court to issue a writ of mandamus directing the trial court to vacate the denial of the motion and to enter an order dismissing the survivors' claims.

The Court held that the RUA provided the farmers immunity from the wrongful death suit. 254 S.W.3d at 874. The Court held, "the [farmers] meet the RUA's requirements because they allowed [the hunters] on their land, free of charge, to engage in the recreational use of hunting. The RUA therefore applies and the [farmers] owed no duty to [the deceased] to keep their land safe or to give any general or specific warnings about the presence of other hunters on the property." *Id.* at 873.

To the same effect is *Wilson v. United States,* 989 F.2d 953 (8th Cir. 1993), which is cited with approval in *Young*. In *Wilson*, a group of scouts entered federal land that was open to the public for fishing, hunting, hiking, camping, picnicking, or canoeing. *Id.* at 956. The scouts paid a fee of $2.00 for the use of a cabin to stay overnight. During the trip, the scouts picked up an aluminum pipe and raised it to a near vertical position, causing the pipe to come in contact with a power line, and received electric shocks.

The Eighth Circuit held that the federal government was protected by the RUA because the scouts had not paid a fee to enter the land for recreational purposes. *Id.* at

956-957. The charge for the use of a cabin did not affect this immunity because this was not a charge for the use of the land for recreational purposes. *Id.* The scouts could have used the federal land free of charge, and the $2.00 payment was only for use of the cabin overnight. *Id.* at 957.

Courts of other states, interpreting statutory provisions similar Missouri's RUA, have similarly concluded that, when a recreational area is open to the public free of charge, immunity is not lost if a fee is charged for something other than the free use of the recreational area. *See Cole v. South Carolina Elec. & Gas, Inc.,* 608 S.E.2d 859, 862 (S.C. 2005) (under South Carolina statute, parking fee at lake open to the public did not destroy immunity); *Majeske v. Jekyll Island State Park Auth.,* 433 S.E.2d 304, 305 (Ga. Ct. App. 1993) (under Georgia statute, parking fee at island open to the public did not destroy immunity); *Vaughn v. Barton,* 933 N.E.2d 355, 363-364 (Ill. App. Ct. 2010) (under Illinois statute, league fee paid by spectator at baseball game open to the public did not destroy immunity).

The plaintiff's reliance on *Hughey v. Grand River Dam Authority,* 897 P.2d 1138 (Okla. 1995), is misplaced. *Hughey* holds that a lake owner was immune under Oklahoma's version of the RUA. In *Lonergan*, the Court of Appeals cited *Hughey* in support of holding that Ameren was immune under the RUA. *Hughey* does not aid the plaintiff.

In light of the plaintiff's allegations, and in light of *Lonergan, Foster*, *Young,* and *Wilson,* the trial court properly granted Ameren's motion to dismiss under the RUA.

C. None of the exceptions in the RUA apply in this case.

The RUA contains exceptions to the grant of immunity to landowners. In this appeal, the plaintiff argues only that the children were charged a fee to swim and that the area was noncovered land. This argument is baseless.

The plaintiff did not allege that Ameren charged the children a fee to swim in the lake. Rather, the plaintiff alleges that Ameren charged fees "as a condition or predicate ***for placement, maintenance, use and /or enjoyment of docks*** on The Lake of the Ozarks" and "enforcement fees for purposes of compelling compliance with its permitting requirements." L.F. at 5 (¶¶ 8-9). As noted, a similar argument was rejected in *Foster v. St. Louis County,* 239 S.W.3d 599 (Mo. banc 2007). Ameren's alleged charge of a permit fee does not transform the lake water surrounding plaintiff's private, residential dock into a "commercial purpose" for Ameren. *See Wilson,* 989 F.2d 953 (8th Cir. 1993); *Cole v. South Carolina Elec. & Gas, Inc.,* 608 S.E.2d 859 (S.C. 2005); *Majeske v. Jekyll Island State Park Auth.,* 433 S.E.2d 304 (Ga. Ct. App. 1993).

The RUA defines "noncovered land" as "any portion of any land, the surface of which portion is actually used primarily for commercial, industrial, mining or manufacturing purposes." § 537.348(3)(d). The petition does not allege that Ameren used the Lake of the Ozarks "primarily for commercial, industrial, mining or manufacturing purposes." Nor could the plaintiff make such an allegation, because such a statement would be false. In *Lonergan*, the Court of Appeals rejected this argument: "In determining whether the land is used for a commercial purpose or a recreational purpose, we will view the use from the standpoint of the landowner, although the use by

the guest is also an important consideration. Since the landowner has opened the land to the public free of charge for recreational purposes, [Ameren] is protected by the statute. The decedents came to the lake intending to use it for recreational purposes free of charge. Furthermore, to suggest that the entire lake is used primarily for commercial purposes would be absurd." 53 S.W.3d at 131.

In affirming the entry of judgment for Ameren in *Lonergan*, the Court of Appeals noted that the Missouri legislature "could not have envisioned an entity such as [Ameren] to be subject to liability for injuries occurring anywhere on 55,342 acres of land." *Id.* at 132. The court also noted "it is inconceivable that [Ameren] could meticulously maintain every inch of the surface waters." *Id.*

The water where the Anderson children were playing on the date of the occurrence was not used by Ameren or plaintiff for "commercial, industrial, mining or manufacturing purposes" and was not "noncovered land." The children entered the water for recreational use. The "noncovered land" exception to the Act does not apply, and Ameren is entitled to immunity.

The plaintiff's reliance on *Lundquist v. Nickels,* 605 N.E.2d 1373 (Ill. App. Ct. 1992), is misplaced. In *Lunquist*, the land owner collected a fee for the use of a dirt bike on his property, and at the time the plaintiff was injured, the plaintiff "was engaged in the activity of riding a dirt bike for which this fee had been paid." *Id.* at 1382. *Lunquist* is clearly distinguishable from this case.

D. The opinion of the Court of Appeals misstates the facts and the law.

Respectfully, the opinion of the Court of Appeals misstates the facts in declaring this: "On appeal, Anderson claims that the RUA does not apply to UE, because, as her petition alleged, UE charged a 'use fee' for lake residents to 'use and enjoy' the lake through their docks." Opinion at 1. The opinion also states: "Anderson's first point on appeal is that the trial court erred in dismissing her petition because UE charged residents a user fee for accessing the lake from their docks, and therefore, the immunity granted by the RUA does not apply to UE." Opinion at 3.

With the greatest respect for the Court of Appeals, the petition did not contain the allegations recited in the opinion. The plaintiff did not allege that Ameren charged Brayden and Alexandra Anderson a fee to swim in the lake. Rather, the plaintiff alleged that Ameren charged fees "as a condition or predicate for placement, maintenance, use and /or enjoyment of docks on The Lake of the Ozarks" and "enforcement fees for purposes of compelling compliance with its permitting requirements." L.F. at 5 (¶¶ 8-9). As noted, a similar argument was rejected by this Court in *Foster*. Ameren's alleged charge of a permit fee does not transform the lake water surrounding plaintiff's private, residential dock into a "commercial purpose" for Ameren.

At another point in the opinion, the opinion gets the facts right: "The Anderson family was not charged an admission price each time they entered the lake from their dock." Opinion at 5. This fact exempts Ameren from liability under the RUA.

The opinion of the Court of Appeals is mistaken in stating that no fee is required to remove an activity from the immunity provided by the Act: "However, section

537.345(1) defines 'charge' as 'the admission price or fee asked by an owner of land.' (Emphasis added.) Anderson argues that the user fees her family paid for the construction, use, and enjoyment of their family dock, on and around which the Anderson children were playing when they were killed, are sufficient to remove the Andersons' use of the lake from the provisions of sections 537.346 and 537.347, such that UE is not immune from liability under the RUA. We agree." Opinion at 5.

Respectfully, this holding overlooks the plain language of the Act, which specifically says that immunity applies in the absence of an "admission price or fee." § 537.345(1). It is undisputed that no admission was paid for the use of the lake.

Under the logic of the opinion of the Court of Appeals, a landowner protected by the statute would lose its immunity to anyone who paid a fee of any kind for any reason, regardless of whether the person paid an "admission price" for the use of a recreational facility. This holding is contrary to the plain language of the Act as well as its public purpose. It is also contrary to the previous cases construing the Act. *See Lonergan v. May,* 53 S.W.3d 122 (Mo. App. 2001); *Foster v. St. Louis County,* 239 S.W.3d 599 (Mo. banc 2007); *State ex. rel. Young v. Wood,* 254 S.W.3d 871 (Mo. banc 2008); *Wilson,* 989 F.2d 953 (8th Cir. 1993).

E. Point II should be dismissed.

In her Point II, the plaintiff purports to seek relief from the circuit court's docket entry stating that her motion for leave to amend was denied. This point should be dismissed, as shown by the undisputed procedural facts.

On September 12, 2013, the circuit court granted Ameren's motion to dismiss and entered judgment against the plaintiff on all claims. L.F. at 36.

On October 7, 2013, the plaintiff filed a motion for leave to amend her petition. L.F. at 38.

On October 10, 2013, without obtaining a ruling on the motion for leave to amend, the plaintiff filed a notice of appeal identifying the dismissal judgment of September 12, 2013, as the only judgment from which she was seeking to appeal. L.F. at 48.

On November 14, 2013, after the notice of appeal was filed, the circuit court made a docket entry stating that the motion for leave to amend was denied. Supplemental Legal File at 1.

Rule 81.08(a) requires the notice of appeal to specify the judgment or order appealed from. An appellate court is confined to review the decision identified in the notice of appeal. *Maskill v. Cummins,* 397 S.W.3d 27, 32 (Mo. App. 2013); *Schrader v. QuikTrip Corp.,* 292 S.W.3d 453, 456 (Mo. App. 2009).

The plaintiff never filed a notice of appeal from the docket entry stating that the motion for leave to amend was denied. The sole notice of appeal filed in this case seeks relief only from the judgment of dismissal. Therefore, the Court lacks jurisdiction over Point II, which should be dismissed.

F. In the alternative, Point II should be denied.

The denial of leave to amend is within the discretion of the trial court and presumed correct. *Doran v. Chand,* 284 S.W.3d 659, 666 (Mo. App. 2009). The burden is on the proponent to demonstrate that the trial court clearly and palpably abused its discretion. *Id.*

The trial court surely did not abuse its discretion to deny a post-judgment motion for leave to amend in this case. The only apparent change that the plaintiff sought to make by the amendment was the proposed addition of a new paragraph 19: "Brayden and Alexandra's entry to the Defendant's property was made, by and through and upon the aforementioned dock. Said dock was subject to fees as further described herein." L.F. at 43.

A party does not have an absolute right to file an amended petition. *Miles v. Rich,* 347 S.W.3d 477, 485 (Mo. App. 2011). One of the key factors that a court must consider in deciding whether to grant leave to file an amended petition is whether the amended petition would cure the defects in the moving party's pleading. *Id.* at 485-486. If the proposed amended pleading would not cure the deficiency in the original pleading, then the court should not grant the motion. *Id.* at 486.

In this case, the plaintiff's proposed amended petition would not allege that Ameren charged a fee to the Anderson children to enter the water. Rather, it would merely state a matter that was already clear in the initial pleading -- Ameren only charged a dock fee. Even if the plaintiff had preserved any right to appeal the denial of leave to amend, the trial court did not commit any abuse of discretion.

CONCLUSION

Ameren holds the Lake of the Ozarks open to the public for water activities free of charge. In exchange, Ameren is protected by Missouri's Recreational Use Act. A ruling otherwise would be contrary to the plain terms of the RUA as well as the public policy it embodies. The public's interest in the free use of land for recreational purposes in order to preserve and utilize Missouri's natural resources would suffer. Persons and entities throughout the state that are entitled to immunity under the RUA that make recreational facilities available to the public would face liability in violation of the statute.

For the foregoing reasons, Respondent Union Electric Company d/b/a Ameren Missouri requests the Court to affirm the judgment of the circuit court.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

A copy of this document was served on counsel of record through the Court's electronic notice system on January 5, 2015.

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 5,000, excluding the cover, certificate of service, certificate required by Rule 84.06(c), and signature block.

/s/ *Jeffery T. McPherson*